

These minutes were approved at the August 25, 2010 meeting.

**Durham Planning Board
Wednesday July 14, 2010
Durham Town Hall - Council Chambers
7:00 P.M.
Minutes**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Susan Fuller; Secretary Stephen Roberts; Richard Kelley (arrived at approximately 7:15 pm); Bill McGowan; Councilor Julian Smith; alternate Wayne Lewis; alternate Peter Wolfe

MEMBERS ABSENT: Richard Ozenich; alternate Council representative Bill Cote; alternate Kevin Gardner

I. Call to Order

Chair Parnell called the meeting to order at 7:03 pm.

II. Approval of Agenda

Chair Parnell said that regarding Agenda Item XI, Mr. Kimball had withdrawn his application.

Susan Fuller MOVED to approve the Agenda as amended. Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.

III. Approval of Minutes

Chair Parnell said Mr. Lewis would sit in for Mr. Ozenich, and Mr. Wolfe would sit in for Mr. Kelley.

May 12, 2010

Page 1, identify who the alternates are, to help indicate who was voting. Also should indicate under Members Absent that Councilor Cote was not at the meeting.

Under Call to Order, it should say "Chair Parnell called the meeting to order, and welcomed Peter Wolfe as a new alternate Planning Board member".

Page 4, second full paragraph, should read "Mr. Roberts asked if the Planning Board could be told what goals the Committee was trying to accomplish...."

Also, 2nd paragraph from bottom should read "Bennett Road".

Page 5, 3rd paragraph from bottom, should read "He said it should be left that the Planning Board would make sure..."

Remove bold from 2nd paragraph from bottom.

Page 6, 1st full paragraph should read "Mr. Roberts noted that a developer of a nearby

subdivision used....”

4th paragraph from bottom, strike “There was no response.”

4th full paragraph, should read “Mr. Michaud said he thought this....”

Page 7, 2nd full paragraph, should read “He said the ZBA had not contemplated that..”

Top paragraph, should read “Chair Parnell asked if the subdivision plan before...”

Page 9, 3rd paragraph from bottom, should read “Mr. Michaud said that at the...

2nd paragraph from bottom should read “..was a good one, and would result in...”

3rd full paragraph, should read “..but he said that wasn’t valid”.

Page 10, 1st full paragraph, should read “...mature hardwoods toward the front..”

3rd paragraph from bottom, should read “..would be larger than or the same as the..”

Page 13, top paragraph, should read “...congested area of Pettee Brook Lane”.

Page 17, 2nd paragraph from bottom should read “...information to justify the...”\

6th paragraph from bottom, should read “..treatment plants, because they contributed only plus or minus 30% of the added nitrogen.

Page 19, 2nd full paragraph, remove the second “Chair of the EDC”

Councilor Smith MOVED to approve the Minutes as amended. Steve Roberts SECONDED the motion and it PASSED 7-0.

IV. Report of the Planner

Mr. Campbell reviewed a large number of documents that had just been provided to Planning Board members at the meeting as well as by email.

Mr. Kelley arrived at the meeting at approximately 7:15 pm.

Mr. Campbell said at the Council meeting on July 12th, the proposed Zoning change regarding MUDOR and ORLI had passed, with a caveat that the Planning Board make a change to its conservation subdivision regulations in the Zoning Ordinance. He said this issue would be discussed under New Business. He said the Board would also discuss another recommendation from the Council, to take out gasoline with convenience store as a permitted use in the ORLI district.

He said another item on the Council Agenda on Monday was the community revitalization tax relief incentive program application from Sigma Beta on Madbury Road. He said there wasn’t time to discuss this, and said it would be continued to the next Council meeting.

Mr. Campbell said on June 25th, the new inclusionary zoning program advisory committee met for the first time with consultant Jack Mettee, who would be developing an ordinance with assistance from the committee. He noted that although he had not been at the meeting, Ms. Fuller had attended.

Ms. Fuller said they got the committee was brought up to speed on the basics of the law and what the grant program allowed. She said before the next meeting in August, Mr. Mettee would be studying the Zoning Ordinance and the various types of housing in Durham.

Mr. Campbell said 12 proposals had been received in response to the town-wide market analysis RFP, and said DCI out of Indianapolis, IN had been chosen. He provided details on this, and said

the final details of the project would be worked out soon. He said they hoped to get going by August 1st.

He said the business visitation and retention subcommittee of the EDC had begun visiting and interviewing 125 listed businesses in Town. He said a number of volunteers would be doing this work, and noted for those who might be interested that more volunteers were needed.

Mr. Campbell said on July 6th, he met with Adam Schultz and Luke Vincent from the MIS Department, regarding a re-launch of the Town website later in 2010. He provided details on this, and said one of the features of the upgraded site would be a calendar of meetings and events for each department, in order to keep residents better informed.

He noted the TAC meeting he had attended the previous Friday, and spoke about the presentation there regarding the Little Bay Bridge project. He said it would cost about \$270 million and would take place over the next 8 years. He explained what the project involved, and said it would result in the upgraded old bridge being used for northbound traffic, and a new Little Bay Bridge being used for southbound traffic.

He said there would be 4 lanes on each bridge, and said the 5 off ramps within a 2 mile span would be reconfigured. He said there would be quite a change in the traffic patterns, including more pedestrian access, and also noted that some roundabout options were being looked at for a few places. He said there was a website where people could follow the project: www.newington-dover.com.

Mr. Kelley asked if there was discussion at the TAC meeting on the far less expensive project on Route 108 to construct shoulders.

Mr. Campbell said there was no discussion on this, and also explained that the project would be delayed because DOT had agreed to also do something with the Hamel Brook area and Longmarsh Road area, and perhaps also do something on Bennett Road to address the stormwater problems. He said this would delay the Route 108 shoulder work for a year or so.

Mr. Roberts asked if there was a plan to change the grade so Route 108 wouldn't constantly be shut down because of flooding.

Mr. Campbell said this would only be done on a small section of Route 108, and provided further details on the work DOT proposed to do in the area.

There was further discussion on the Little Bay Bridge project, and Mr. Campbell noted that it would result in some traffic delays in Durham.

Mr. Campbell said there were no new applications for the July 28th meeting.

- V. **Public Hearing on an Application for Site Plan Review** submitted by Jim Keenan, Atkinson, New Hampshire on behalf of Colonial Durham Associates, New York, New York and Federal Savings Bank, Durham, New Hampshire to construct a two-lane, drive-up banking facility for an

existing bank. The property involved is shown on Tax Map 5, Lot 1-1, is located at 7 Mill Road Plaza, and is in the Central Business Zoning District.

VI. Public hearing on an Application for Conditional Use Permit submitted by Jim Keenan, Atkinson, New Hampshire on behalf of Colonial Durham Associates, New York, New York and Federal Savings Bank, Durham, New Hampshire to construct a two-lane, drive-up banking facility for an existing bank. The property involved is shown on Tax Map 5, Lot 1-1, is located at 7 Mill Road Plaza, and is in the Central Business Zoning District.

Jim Keenan represented the applicant, and introduced Michael Keene, the architect for the project.

Mr. Keene discussed the site plan that had previously been presented to the Board. He noted that it also showed the La Paz addition, and inadvertently showed parking next to the building the restaurant would be in. He said in working with Mr. Campbell as a result of comments made at the last Planning Board meeting, they determined that those parking spaces were not included as part of the La Paz plan.

He also noted that there had been discussion at the previous Board meeting about how the bank's site plan would impact truck movement and deliveries to the backs of buildings, as well as how it would affect the potential for a driveway coming through from the Town property off of Main Street. In addition, he said there had been a comment from Mr. Johnson regarding the idea of relocating the existing handicap parking space to the new spaces created between the two buildings, in order to avoid a traffic conflict.

Mr. Keene said the revised site plan provided that evening showed all of these changes, and he described them in detail, using the site plan. He said there would be 4 handicap parking spaces and one standard parking space. He also noted that La Paz restaurant was shown as completed through all three phases of that project on the revised plan.

He said the revised plan also showed the potential for a future driveway between the buildings coming from Main Street. He said the existing travel lanes would remain, and said their size would increase as a result of the bank moving its parking spaces to the south. He also said the previously proposed handicap parking space out front would be turned into a regular parking space.

Mr. Keene briefly discussed the analysis done by Appledore Engineering of the turning movements for a tractor trailer trying to service Durham Marketplace. He explained how the handicap parking area and rain garden had been configured to open up the lane to allow trucks to move through. Mr. Kelley asked what speed the engineer had used regarding the turning movements for a tractor trailer.

Gretchen Young Of Appledore Engineering said it would be a typical, minimal speed that the truck would be using to come through the parking lot. There was discussion that the software used to do the analysis did not allow the input of speed information. Ms. Young said there would be slow turning movements in the parking lot.

Ms. Fuller asked if the island in the plan would be raised or flat.

Mr. Keene said the original proposal was a raised, planted island. He said the Town Engineer had suggested doing the rain garden instead, and said the applicants had thought that was a great idea. He noted that a raised island had been included next to the building, which pushed the drive through lanes off by 5 ft, and thus helped with turning movements as well as visibility for cars and pedestrians.

He said the revised plan also included a painted crosswalk and tactile warnings for pedestrians entering travel lanes. He said the appropriate signage was also included.

Mr. Roberts asked Mr. Keene if he had verified with the DPW an approximate fill or cut section in order to understand that the toe of slope could be contained within the width, for the possible driveway from the Grange Hall on Main Street.

Mr. Keene said he had not, in part because they felt that based on the truck movement, the driveway needed to be at grade by the time one reached the existing paved area.

Mr. Roberts asked if the applicant was willing to accept the fact that if this access was put in, the bank might have to change some of its plans.

Mr. Keene said the bank was aware of the situation, and said they were willing to accept that.

Mr. Roberts asked if there had been discussion with the owner of La Paz, and Mr. Keene said no. Mr. Roberts said the La Paz plan involved a covered entry toward the back of the building, and said he didn't see any access for that, unless one was walking into the travel lane.

There was discussion on the front and back entry to the La Paz, and about safe access to the entry toward the back of the building.

Chair Parnell said assuming that La Paz went to phase three, it looked like what was on the applicant's site plan was that there would be no parking between the two buildings other than the 4 handicap spaces and the regular parking space.

Mr. Keene said that was their understanding.
There was further discussion.

Mr. Keene said according to the La Paz plan, the back entry lead to a takeout area. He said under the current configuration, there wasn't a lot of parking back there to facilitate that. He suggested that they could reduce the handicap parking spaces proposed to one or two, which would allow a few spaces for the takeout parking.

Mr. Roberts said the La Paz plan had come in with a center island for takeout service, yet handicap spaces were being put where this had been proposed

Mr. Campbell said a problem was that the parking at the Plaza wasn't dedicated to any particular business and could be used by anyone.

Mr. Roberts said the management of the Plaza should be getting the tenants together to address this. He said it wasn't the Planning Board's business to determine this.

Mr. Keene suggested again that some of the handicap spaces could be taken out so there could be some spaces for the restaurant carryout service. He also noted that when La Paz was doing takeout, the bank wasn't in full operation anyway.

Mr. Roberts suggested that the applicants contact the owner of La Paz to work this out.

Mr. Wolfe asked what the appropriate amount of handicap spaces was for retail space such as the bank.

Mr. Keene said one space was required, based on the square footage of the bank, but said usually it was based on a percentage of the entire shopping center.

Mr. Keenan suggested that the bank could simply replace the one handicap space being eliminated, and could make the rest of that strip any kind of parking the Board wanted.

Mr. Keene said the bank didn't need 4-5 handicap spaces.

There was further discussion that the parking at the Plaza wasn't for any particular business, with the exception of Durham Marketplace, which had guaranteed parking spaces in its lease.

Mr. Roberts said while that was true, he thought there should be discussion between the owner of La Paz and the bank regarding access and parking.

Richard Kelley MOVED to open the Public Hearing on an Application for Site Plan Review and Conditional Use Permit submitted by Jim Keenan, Atkinson, New Hampshire on behalf of Colonial Durham Associates, New York, New York and Federal Savings Bank, Durham, New Hampshire to construct a two-lane, drive-up banking facility for an existing bank. The property involved is shown on Tax Map 5, Lot 1-1, is located at 7 Mill Road Plaza, and is in the Central Business Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell asked if there were any members of the Public who wished to speak in favor of the application.

Peter Andersen, 8 Chesley Drive, said he was an abutter, and was a patron of the bank. He said having a drive through would be a service to the community, and said it wouldn't be in a location where it would be an eyesore. He also said it would be too bad to add anymore handicap spaces than necessary, and suggested utilizing that area in another way by eliminating at least two of the spots.

Town Engineer Dave Cedarholm said the applicant had done a great job in designing the project. He said the rain garden was a great idea, and applauded the owner for including it. He noted that he had suggested it, and had not requested it, as a way to do something for water quality on the site.

Mr. Roberts asked Mr. Cedarholm if he agreed that if the Town was forced to put an exit through the Grange Hall, the current layout would support this.

Mr. Cedarholm, said he hadn't looked at the plans from that perspective, so couldn't really comment on that.

Chair Parnell asked if there were any members of the public who wished to speak against the project, or who had concerns about it. There was no response.

Councilor Smith MOVED to close the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Ms. Fuller said with the uses and accesses planned for that area, she wondered if it was absolutely necessary to also have parking there. She said there was a big parking lot out front, and said people would be using their cars for the drive-ups. She said the cars and the pedestrians should be kept separate, and said they could close things up and make them more pedestrian friendly.

Mr. Kelley asked how things could be closed up, if they weren't utilizing the parking stalls to achieve this on one side, and La Paz on the other side.

Ms. Fuller said taking the parking out kept less cars going in and out in an area where they were encouraging people to walk to the bank, to La Paz other sections of the Plaza, and possibly up to the Grange property.

There was discussion about the current pedestrian access, and the fact that there were cars backing out now, in a tighter spot.

Ms. Fuller said she understood that, but said that didn't mean it was the best place for it.

Chair Parnell asked if the applicants needed the parking there, or were only doing it because it was available.

Mr. Keene said they didn't need it, and would let the spaces be dedicated to the takeout restaurant if that was what the Board wanted.

Chair Parnell said this wasn't the Board's choice to make.

Mr. McGowan suggested that they could leave the spaces now, and rethink this in the future.

Mr. Campbell said he thought taking the spaces away would hurt Colonial Durham Associates, and said he didn't see why they would want fewer spaces.

Chair Parnell said as the entrance was designed now, it would be easier for drivers to follow where they were supposed to go.

Mr. Campbell said with handicap spaces, there probably wouldn't be as much traffic in and out of them, which could create a safer environment. He said if they were made into takeout spaces, there would be cars coming in and out all the time.

Ms. Fuller said that was actually a better idea.

Mr. Campbell noted the significant number of parking spaces available for patrons of La Paz, and Chair Parnell noted that the spaces were closer to La Paz than they were to the bank.

Mr. Kelley said the more pavement there was that wasn't designated, the more latitude there was for a vehicle to be in different spaces. He said having the parking there defined where the cars would go. He said there was almost too much pavement, and said there was the possibility in the future of creating a pedestrian walkway parallel to the parking stalls, which would bring customers to the walking path.

He also said there was a nice triangular parcel in front of La Paz that could be utilized in a different fashion and still allow plenty of room for trucks and cars to move in and out. He asked how many parking spaces were required.

Mr. Campbell said his sense was that the bank had what they were required to have. There was discussion about the existing conditions plan for Mill Plaza, and what handicap spaces were on it.

Mr. Keene said Appledore said the standard was 2% for any parking lot over 300 parking spot, so 7 spaces were needed.

Mr. Campbell noted that in proposing the row of handicap spaces and one regular space, the bank had simply been doing what Mr. Johnson had suggested that they do.

Ms. Fuller asked if some of the other handicap spaces could perhaps go away if the new ones were put in.

Mr. Kelley said the handicap spaces were supposed to be located near where people wanted to go. He questioned putting them next to the bank drive through, and said he didn't think as many as were proposed were needed. He asked what Mr. Johnson's reason was for requesting so many.

Mr. Campbell said a reason was to get rid of the conflict with the existing handicap spot in front of the bank.

Brad Mosqueda of Appledore said they were heading in the direction of making this noncompliant. He suggested removing two handicap spaces, which mean that they could get three regular spaces.

Mr. Kelley said he liked this suggestion, and said this would mean there would be some parking spaces for La Paz.

Mr. Keene noted the waiver request for drainage calculations.

There was discussion that the turning radius plan would be submitted by the applicant.

Mr. Kelley asked if Mr. Cedarholm was expecting to see a final drainage plan. He noted that there was a condition of approval concerning this.

Mr. Cedarholm said he had seen all that he needed to see in terms of what the applicants proposed to do.

Mr. Campbell noted that the details were submitted with the original site plan. It was agreed to remove this condition of approval.

Chair Parnell confirmed that the applicants were ok with the wording of the condition of approval concerning the right of way from Main Street.

Mr. Roberts asked if there was any need to show a pedestrian walkway for people exiting the back access to La Paz, or to access the current walkways shown on the plan. There was discussion.

The Board next went through the Conditional Use checklist, and had no issues with any of the items in it.

Mr. Kelley asked if any comments were received from the Fire Department, and Mr. Campbell said verbal comments were received. He said they had no issues with the applications.

Site Plan Application

Conditions of Approval to be met prior to Signature of Approval on Site Plan

1. The applicant shall supply one mylar plan and one paper copy for signature by the Planning Board Chair.
2. A new Site Plan shall be submitted showing the removal of two of the ADA spaces between the bank and the proposed La Paz Restaurant. All final plans must be stamped by appropriate professionals.
3. The applicant shall post an acceptable financial surety prior to the signature of the final Site Plan that is approved by the Planning Board.... The amount of the surety shall be determined by the Department of Public Works.

Conditions of Approval to be Met Subsequent to the Signature of Approval on the Site Plan:

1. The Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. If there is a right-of-way from Main Street through the Grange Hall property owned by the Town of Durham, the applicant may need to make adjustments to their parking,

rain garden and drive-thru canopy to accommodate the right-of-way and traffic. These adjustments may include but are not limited to removing the parking, rain garden and/or drive-thru canopy and lanes.

3. Maintenance Guarantee--a financial surety to guarantee that all site work was properly done shall be posted by the applicant with the Town. Such maintenance guarantee shall be in an amount of two (2) percent of the estimated project cost and shall remain in force for two (2) years after site improvements are completed. If such repairs are needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements.

4. As-built construction drawings, plan and profile, of all infrastructure improvements shall be submitted in electronic and paper copy at a scale of 1" to 20', including, but not limited to:

- Underground Utilities (sewer lines, storm drains, water lines, electrical, phone, cable, natural gas lines, etc.)
- Drainage ways, ditching, impoundments, swales, etc.
- Road construction

Conditional Use Permit Application

Conditions of Approval to be met prior to Signature of Approval on Site Plan

1. The applicant shall supply one mylar plan and one paper copy for signature by the Planning Board Chair.
2. A Conditional Use Permit shall be issued by the Zoning Administrator.
3. All final plans must be stamped by appropriate professionals.

Conditions of Approval to be Met Subsequent to the Signature of Approval on the Site Plan:

1. The Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.

Richard Kelley MOVED to approve the Application for a Conditional Use Permit and a Site Plan Application submitted by Jim Keenan, Atkinson, New Hampshire on behalf of Colonial Durham Associates, New York, New York and Federal Savings Bank, Durham, New Hampshire to construct a two-lane, drive-up banking facility for an existing bank. The property involved is shown on Tax Map 5, Lot 1-1, is located at 7 Mill Road Plaza, and is in the Central Business Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

- VII. Public Hearing an Application for Amendment to a Previously Approved Site Plan** submitted by Park Court Properties Inc., Durham, New Hampshire to retain an existing house on the lot and to

move the existing driveway and parking area serving the existing house to a new location. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road, and is in the Multi-Unit Dwelling/Office Research Zoning District.

VIII. Public Hearing an Application for Amendment to a Previously Approved Conditional Use Permit submitted by Park Court Properties Inc., Durham, New Hampshire to retain an existing house on the lot and to move the existing driveway and parking area serving the existing house to a new location. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road, and is in the Multi-Unit Dwelling/Office Research Zoning District.

Bill Doucet of Doucet Survey represented the applicant. He said since the previous meeting with the Board, he had met with the Conservation Commission and the ZBA. He said variances were received for all the applications, and said the variances were conditioned upon the parking lot being constructed with porous materials, and putting landscaping between the parking lot and the road. He briefly summarized again what the applicant proposed, which was to keep the existing house on the property, and to shift the parking area from the east to the west side of the property.

Councilor Smith MOVED to open the Public Hearing on an Application for Amendment to a Previously Approved Site Plan and a Previously Approved Conditional Use Permit submitted by Park Court Properties Inc., Durham, New Hampshire to retain an existing house on the lot and to move the existing driveway and parking area serving the existing house to a new location. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road, and is in the Multi-Unit Dwelling/Office Research Zoning District. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell asked members of the public who were in favor or against the application, or who had concerns about it to come forward. There was no response.

Councilor Smith MOVED to close the Public Hearing. Susan Fuller SECONDED the motion.

Mr. Kelley asked if an updated site plan would be provided, based on the ZBA findings.

Mr. Doucet said he would be happy to provide a modified landscape plan to show some additional plantings along the proposed driveway and parking lot.

Mr. Kelley said he had brought this up in case the Board wanted to continue the public hearing until this plan was received.

Mr. Roberts asked if there was a description of what the plantings would be, and Mr. Doucet said the ZBA wasn't descriptive about this, probably because it was more of planning issue than a zoning issue.

Mr. Kelley said he would like to see the landscape plan before deliberating, and asked if there would be a problem with this.

Mr. Doucet said there would be. He noted that the site was under construction, and that they were

looking to complete the project over the next 4 weeks, so would like to proceed.

Councilor Smith asked if this could be a condition to be met subsequent to approval.

Mr. Roberts asked if the Zoning Ordinance performance standards gave direction on what the landscaping should be.

Mr. Doucet said the ZBA said to add some landscaping along that area. He said the applicant was happy to do that, and would add that to the landscaping plan.

Mr. Campbell said a condition of the ZBA approval was that additional vegetation would be placed between Mast Road and the new driveway and parking area for purposes of buffering.

Mr. McGowan asked if there could simply be the buffering that was originally proposed when the plan was to take the house down.

Mr. Doucet said he believed the intent of the Planning Board was fewer tall trees, and more shrubs to provide buffering.

Mr. Campbell noted that under Section 175-116 C, it said the perimeter landscape buffer along a street "shall consist of native planting materials or planting materials and man made features to create a minimum three foot high visual relief screen in the form of a hedge, fence, planter box, berm, divider, shrubbery or trees, or a combination thereof. All landscaping to form such visual relief shall create a two foot tall minimum screen at planting."

Mr. Doucet said they would be happy to comply with that.

Councilor Smith asked if there had been any discussion with the ZBA on new plantings where the old driveway was.

Mr. Doucet said there was some discussion, and said he had shared with the ZBA the landscape plan for the original site plan, which showed additional plantings going in there.

The motion PASSED unanimously 7-0.

There was discussion on Section 175-116 E, which spoke about a 6 ft high evergreen screen. It was noted that the Board had required this for the Seacoast Rep application.

The Board agreed that there would be a condition of approval regarding landscaping between Mast Road and the new driveway and parking area, and that the wording would be on the landscape plan.

Mr. Kelley asked if the Fire Department had commented on the applications, and Mr. Campbell said they had no issues with either application.

Mr. Roberts said he had spoken at some point with the driver of the ladder truck, who said the original application had taken care of all the Fire Department's concerns.

Site Plan

Conditions of Approval to be Met Prior to the Signature of Approval on the Site Plan:

1. All previous conditions from the November 18, 2009 Site Plan Approval shall be incorporated by reference into these Conditions of Approval.
2. The applicant shall supply one mylar plan and one paper copy for signature by the Planning Board Chair.
3. All final plans must be stamped by appropriate professionals.
4. Additional landscaping shall be shown on the landscaping plan as per Section 175-116(C) of the Zoning Ordinance and shall buffer the new driveway and parking area from Route 155A (Mast Road).

Conditions of Approval to be Met Subsequent to the Signature of Approval on the Site Plan:

1. The Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. The applicant shall comply with the conditions of the Zoning Board of Adjustment decision of July 13, 2010.

Conditional Use Permit Application

Conditions of Approval to be Met Prior to the Signature of Approval on the Site Plan:

1. All previous conditions from the November 18, 2009 Conditional Use Permit Approval shall be incorporated by reference into these Conditions of Approval.
2. The applicant shall supply one mylar plan and one paper copy for signature by the Planning Board Chair.
3. The Code Enforcement Officer shall issue an amended Conditional Use Permit.
4. All final plans must be stamped by appropriate professionals.
5. Additional landscaping shall be shown on the landscaping plan as per Section 175-116(C) of the Zoning Ordinance and shall buffer the new driveway and parking area from Route 155A (Mast Road).

Conditions of Approval to be Met Subsequent to the Signature of Approval on the Site Plan:

1. The Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. The applicant shall comply with the conditions of the Zoning Board of Adjustment decision of July 13, 2010.

Councilor Smith MOVED to approve the Application for an Amendment to a Previously Approved Site Plan and a Previously Approved Conditional Use Permit submitted by Park Court Properties Inc., Durham, New Hampshire to retain an existing house on the lot and to move the existing driveway and parking area serving the existing house to a new location. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road, and is in the Multi-Unit Dwelling/Office Research Zoning District. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Roberts said this plan was a good example of what was called a transect by the B Dennis Group. He noted that the adjoining properties were either University owned or purchased by the developer in order to interface with the residential area. He said if there were residential areas surrounding this property, with the current Zoning Ordinance, this development in its current layout would be nearly impossible.

He said the Zoning Ordinance did not allow single family houses or any inordinate landscaping on this type of application. He said on the northeast side, there was a transect relating to a residential zone, and on the south side, there was a transect relating to a University or quasi commercial zone. He said this might come up with other planning discussions later on at the meeting.

Break from 8:48 - 8:56 pm

IX. Public Hearing on amendments to the Site Plan Regulations and Subdivision Regulations to address the management and control of the discharge of stormwater. The changes would include the addition of definitions pertaining to stormwater under Section 3 of both regulations, the amendment of section 9.03 of the Site plan Regulations, and the amendment of Section 9.06 of the Subdivision Regulations.

Mr. Campbell provided a brief summary, and said the regulations were an attempt to spell out what Mr. Cedarholm had been trying to tell developers about the practices of dealing with stormwater. He said it had been framed as an Ordinance at first, and after going back and forth on this several times, it was now in the form of regulations, where it would stay. He noted that these were regulatory changes that were strictly under the purview of the Planning Board.

Mr. Cedarholm thanked the Planning Board for staying with him on this and working so hard on the regulations. He also noted that the water resources subcommittee had been working on them for about a year. In addition, he thanked those developers and others who had commented on the draft regulations.

He said this originally was drafted as an ordinance to address pre and post construction projects, but

also illicit discharges and non development related stormwater issues. He said that piece still needed to be part of an ordinance, and said he would bring a much abbreviated ordinance to the Council to address the stormwater issues that didn't fall under the Planning Board.

Mr. Campbell noted that that ordinance would be part of the Town Code, and would not be part of the Zoning Ordinance.

Mr. Cedarholm spoke further on why an ordinance was needed to address illicit discharges.

Susan Fuller MOVED to open the Public Hearing. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell asked those who wished to speak in support of the regulations to come forward.

Pete Murphy, said he had recently finished a student housing project at 22 Rosemary Lane. He noted the stormwater management plan developed for this project. He said there had been a meeting early on between him, engineer Mike Sievert and Mr. Cedarholm, after which there was a sense that the plan he had could be better. He said there was further discussion, and they came up with option B, which was the plan they went with. He said as things evolved, he realized that option B, although more expensive than option A, was the right thing to do. He said the plan exceeded what the existing stormwater regulations required, and also exceeded what the updated stormwater regulations would require.

Mr. Murphy said it had been a really nice collaborative effort, and said the final product was that when it was pouring rain, the system worked really well. He said it was quite a system, with pervious pavers, a basin that took water down around the building through a rip rap swale, and an infiltration trench before it hit the brook.

He said he was in favor of what Mr. Cedarholm and the Planning Board had been talking about with these proposed regulations. He noted that the difference between option A and option B wasn't that much. He said his intent was to hold the building for 30 years, and said looking at it this way, it was a good decision.

Ms. Fuller said there had been a Planning Board field trip to the building, and said it looked really good.

Mr. Roberts asked Mr. Murphy if there was anything the Board should do that it wasn't doing.

Mr. Murphy said everywhere he went throughout the whole process, there were well thought out questions, from people who really wanted the best for the Town. He said he didn't know about stormwater when he started, but as the process went forward, it was a really nice experience. He said all the questions he was asked were valid, great questions.

Mr. Roberts asked Mr. Murphy if he had any experience with green roofs.

Mr. Murphy said not yet, but said if there was another project, he would look into this, as well as solar panels and other things. He said this would be beneficial and very doable these days. Asked by

Mr. Kelley when he might be in front of the Planning Board again Mr. Murphy said he was looking to do another project at some point.

Beth Olshansky, 122 Packers Falls Road, said she wanted to speak in support of the proposed stormwater regulations, and said the current regulations were put in place in 1982. She noted the expertise of Mr. Cedarholm, Mr. Kelley and Jamie Houle in developing them and said she appreciated this. She said she liked what Mr. Murphy had said about stewardship, and said these regulations were an important step in that direction.

Ms. Olshansky said one concern she had about the regulations was section 9.03.3, concerning waivers and exceptions. She asked what happened 10 years from now, when there might not be volunteers on the Planning Board with expertise in this area. She noted that criteria needed to be followed in order for a variance to be granted.

There was discussion. Mr. Roberts said there would have to be an engineer sign off on something like that.

Ms. Olshansky said she would like to see some language in the ordinance around that, as guidance. She said as it read now, it was subject to a lot of interpretation by whoever sat on the Planning Board.

Malcolm McNeill, 44 Colony Cove Road, said he wanted to thank Steve Roberts for his involvement with the ORLI/ MUDOR Zoning change in terms of the guidance he provided in writing and in person.

Regarding these regulations, he said while he didn't think every aspect of the regulations contained standards he thought were reasonable, Mr. Cedarholm and the Planning Board had engaged in a reasonable and inclusive process in coming to closure on some difficult issues concerning stormwater. He noted that Mr. Cedarholm had gotten comments from developers as to the effects of the regulations on projects in Durham. He commended Mr. Cedarholm for this, and commended the Planning Board for the final product.

He said one component of it was that larger projects, requiring State alteration of terrain permits would not be required to go through the local process, except in regard to the operation and maintenance plan. He said this was reasonable, and said the Town would be reasonably protected. He noted that he had recently suggested wording for the stormwater management checklist that better reflected this than the current wording on the checklist, and he provided details on this. He said Mr. Cedarholm had indicated that this would be an acceptable change, and he urged the Board to consider it.

Regarding the waiver issue, Mr. McNeill said no regulations were immutable, no projects were the same, and also said planning board inherently had the power to grant waivers. He said he was troubled a bit by the present waiver language, and suggested some alternatives. He asked what the wording "for reasons heretofore well demonstrated" meant, and said if it meant the applicant was proceeding in good faith and was trying to comply but needed some assistance, which was how he thought most planning boards would approach that, he was comfortable with it.

Mr. McNeill said this was a very significant scientific document, and said there would be occasions where applicants needed assistance, despite their best efforts to comply. He said perhaps the language could be improved a bit, but he said on balance, he commended Mr. Cedarholm for his efforts, and personally thanked him for his willingness to interact with himself and others in regard to this process.

Councilor Robin Mower, 11 Faculty Road, said she was the Council representative to the Planning Board subcommittee on water resources protection, which had worked with the Town Engineer on these draft regulations. She said the towns of the Seacoast held the future of Great Bay in their hands, and said to the extent that they acknowledged their responsibility through their land use regulations, they would either help or hurt the future of groundwater, rivers and estuaries, and would either promote or ignore the sustainability of the towns.

She said stormwater management was key. She said urbanization/sprawl had occurred well beyond population growth in the Seacoast, and noted a Brookings Institute study from 1997 that had found that part of the explanation for higher rates of land consumption in the Northeast was fragmented local governments. She said this highlighted the need for towns to work together to address sprawl related issues. She said Durham was slowly taking steps to protect its precious water resources on a regional level. She noted that it had recently joined the Southeast Watershed Alliance in order to collaborate on planning and implementation measures to improve and protect water quality, and to more effectively address the challenge of meeting clean water quality standards.

Councilor Mower said the Town Council had appointed a representative to represent Durham's interest in addressing EPA wastewater standards for nitrogen. She said on Monday, she had asked that the Council appoint a representative to the Bellamy/Oyster River watershed protection organization, which also would represent Durham's interests in meeting EPA's regulations, to the economic benefit of all participating towns.

She said they must all be progressive in addressing stormwater management on a town level. She said experts estimated that between 70-80% of the nitrogen in Great Bay was due to non-point sources, which was highly attributable to impervious surfaces. She also noted that when stormwater runoff ran too quickly into streams, it didn't recharge groundwater. She provided details on the significant amount of water that was therefore unavailable to local towns. She said they couldn't afford not to manage stormwater as well as they now knew how to do.

Councilor Mower said Durham was eager to see development to enhance its economic base. She said they needed to manage their ability to continue to provide water services and protect water related investments and resources for new growth and current users. She said these stormwater regulations represented an excellent integration of current scientific knowledge and a practical understanding of the concerns of developers. She urged that the Planning Board adopt these regulations.

Susan Fuller MOVED to close the Public Hearing. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell said the Board could deliberate and make some minor changes without having to go back to Public Hearing, and could then vote to approve the regulations. He said the change to the checklist was recommended, which made sense because it would fit with the regulations.

Concerning the waiver issue, he noted that bonding and maintenance guarantee wording was taken out of the stormwater regulations draft because it already existed in the site plan and subdivision regulations. He suggested that the wording on exempt projects could be left in Section 9.03.3, and the waiver language could be taken out, to be replaced by the waiver language that was already in the site plan and subdivision regulations.

Councilor Smith suggested getting rid of the wording “for reasons heretofore well demonstrated”.

Mr. Kelley said he liked wording Mr. McNeill had suggested - “for good cause shown”, including reasonable efforts made. He suggested that they could also say “with the advice of the Town Engineer.”

Mr. Campbell said he liked the idea of having an engineer, either the Town engineer or another licensed engineer review the situation, rather than leaving this up to Planning Board members.

Ms. Fuller said she thought that happened anyway, noting that it had just happened with the Mill Plaza bank application. She said she liked the wording “for good cause shown.”

Mr. Wolfe said he thought they had to go beyond this, with some objective criteria that would enable the Board to grant the waiver.

Mr. Kelley said it was believed that the majority of nitrogen going into Great Bay was coming from non-point sources, and not from the wastewater treatment plants. He said it would be interesting to see how the studies on this issue all played out. There was discussion.

Mr. Kelley noted that the Lamprey River Advisory Committee had awarded a small grant to the NH Coastal Protection Partnership, which had a nitrogen reduction campaign that among other things promoted the use of rain barrels. He said he would keep the Board informed on this.

Mr. Campbell suggested the following wording, “For good cause shown, the Planning Board may waive one or more of these regulations, after seeking the advice of the Town Engineer or other professional licensed engineer as requested by the Planning Board”. He noted that there were times the Planning Board had requested that an applicant check with the UNH Stormwater Center

Mr. Kelley said he liked the wording.

After further discussion, it was agreed that the exemption language would remain.

Mr. Campbell said he would make the proposed change to the checklist for both the site plan regulations and the subdivision regulations.

Richard Kelley MOVED to adopt the revised Site Plan Review Regulations stormwater

management section as amended this evening, the revised Subdivision Regulations storm water management section as amended this evening, and the related stormwater management checklist as amended this evening. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

X. Public Hearing on a Zoning Ordinance Amendment to Article XII, Zone Requirements, to remove Section 175-155 (E) "Minimum Contiguous Area"

Mr. Campbell said when this provision was originally put in the Ordinance in 2005, there was a lot of discussion back and forth. He said it came down to the fact that it would apply only to conventional subdivisions. He said the most recent request to take another look at the provision was from Steve Michaud of Doucet Survey, in May of 2010. He said the Board had recently put it on the Agenda, and voted to eliminate it from the site plan regulations altogether.

Chair Parnell read the provision.

Councilor Smith MOVED to open the Public Hearing on a Zoning Ordinance Amendment to Article XII, Zone Requirements, to remove Section 175-155 (E) "Minimum Contiguous Area". Bill McGowan SECONDED the motion.

Mr. Roberts said he had been torn about this provision, and said instead of this radical provision that was so consumptive, he had found ordinances from Salisbury MA and Hollis NH that specified a block that needed to be able to fit as a square or circle inside the lot, to avoid enormously irregular lots

The motion PASSED unanimously 7-0.

Peter Andersen, 8 Chesley Drive, said in applying this ordinance, he had found it onerous at times. He suggested that it be removed.

Malcolm McNeill, 44 Colony Cove Road, first noted that this provision didn't impact his family's property. He asked what the provision meant, and noted the various setback requirements and overlay requirements that were already in place. He said it was not a common provision. He said he had a rule that if something didn't reasonably make sense, it shouldn't be imposed on private property rights. He said he was therefore in favor of eliminating it.

Beth Olshansky, 122 Packers Falls Road, said she had paid close attention during the Zoning rewrite, and recalled the origins of this provision and why it did make sense. She said at the time, a subcommittee was working on the conservation subdivision regulations, and said this provision was a part of that. She said she had been surprised to find that it wasn't in the conservation subdivision regulations anymore.

She said the whole point of it was to close up loopholes for lots that didn't make any sense at all, such as Swiss cheese lots, with mostly wetland and pockets of buildable land. She said another concern was bowling alley lots, which from a planning perspective didn't make a lot of sense. She said these provisions were intended to make at least some portion of a lot regular.

She said the provision had been created in part by a local developer who was highly respected. She said there was also consultation with Ben Frost of the Office of State Planning as well as legal counsel. She said there was a lot of reasoning behind it, and consultation with experts in the field, and said she would like it to be preserved.

Councilor Robin Mower, 11 Faculty Road, said Ms. Olshansky's comments had made her consider some of the impacts of bowling alley lots. She asked if such a lot would lead to more concerns about difficulties with working with setbacks. She also said it was important to have a sense of where these ordinances had come from, and why they had come about. She said the institutional memory of those who had worked on the Master Plan and Zoning rewrite had been lost. She said without a compelling reason to remove an ordinance, it was important to consider why it might have come about.

She noted that the Conservation Commission had recently looked at the issue of the calculation of usable area. She said their conversation was that if there was not a scientifically based alternative, a conservative approach should be taken. She said she hoped the Planning Board's discussion would encompass those sort of compelling arguments.

Ms. Olshansky said she was disappointed that the Conservation Commission wasn't invited to weigh in on this provision, and asked if this would be a reasonable thing to ask.

Mr. Roberts said he had forgotten to let the Conservation Commission know about this proposed Zoning change.

Mr. McNeill asked the Board if they felt the local and State wetland regulations were inadequate. He said he didn't know how this provision had come about, but said that in terms of applicants coming before the Town, if they met all the setback requirements and all the environmental requirements, the question was whether this overlay of regulation was necessary.

He said he had no client or property that would be affected by it, but said it was an unusual provision. He said some towns had better definitions regarding regularly shaped lots, and said he could help with this. But he said this particular language was unique to Durham, and said he wasn't sure there was a rational basis for it.

Councilor Smith MOVED to extend the meeting beyond 10:00 pm. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Mower thanked Mr. McNeill for suggesting that there might be more appropriate language. She said her primary focus was considering why this provision had been included, and requesting that there be a discussion that took this into account.

Mr. Campbell said in 2005, the provision was originally written differently than it appeared now. He read the language, and described some of the tortuous process by which it had evolved. He said planning consultant Mark Eyerman, who was working with the Board at the time on the Zoning rewrite, thought the provision they ended up with had little value. He said the language needed to

be looked at again, and said at the very least, it needed to be made more understandable.

Chair Parnell asked if there were enough regulations in other areas, in terms of setbacks, wetlands overlay, etc. that would take care of the issues this item was trying to address.

Mr. Campbell said the Swiss cheese argument had more weight than the bowling alley argument. He said there were protections against bowling alley lots because of the setback requirements and other requirements. He said the question was whether or not the Board believed that for non conservation subdivisions, there were already enough protections. He noted that even with conventional subdivisions, usable area had to be calculated by taking out the various unusable soils.

Councilor Smith MOVED to close the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell asked if the Board wanted to deliberate on this that evening.

Richard Kelley MOVED to recommend to the Town Council the removal of Section 175-55(C) in its entirety. Councilor Smith SECONDED the motion.

Mr. Kelley said he was looking at a plan the Board might see shortly. He said it exceeded the shape the provision was looking for, but the land was 500-600 ft long, and 125 - 135 ft wide. He said it wouldn't be allowed under this provisions, and said this didn't seem right. He said the concerns regarding Swiss cheese lots and bowling alley lots were valid, but said there were other provisions in the Zoning Ordinance that covered this, and said he was comfortable with them.

Councilor Smith said he agreed.

Mr. Wolfe said he had no idea how to apply this provision, and said it didn't make any sense. But he said there was a perceived need for something other than what existed with the other regulations. He said he was uncomfortable because there hadn't been the opportunity for the Conservation Commission to comment on this, and to determine whether there was more appropriate language that was also more understandable.

The motion PASSED 6-1, with Steve Roberts voting against it.

Mr. Kelley noted that there was still ample time for the Conservation Commission to prepare and make a presentation to the Council on this provision.

- XI. Deliberations on an Application for Amendment to a Previously Approved Conditional Use Permit** submitted by Steven F. Kimball, Pine Ledge Holdings, Auburn, New Hampshire to create a parking area and to authorize an exterior addition instead of an interior addition. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District.

Withdrawn

XII. Acceptance Consideration of an Application for Subdivision submitted by Peter Andersen, Durham, New Hampshire, on behalf of Elizabeth C. Smith Trust, Durham, New Hampshire for the purpose of a porkchop subdivision. The property involved is shown on Tax Map 16, Lot 19-0, is located at 260 Durham Point Road and is in the Rural and Residence C Zoning District.

The applicant, Peter Andersen, said there was an approximately 27 acre parcel with a house and barn on it, and said he was proposing to subdivide it into two additional lots, of 14 acres and 7 acres. He noted some comments had had received from Mr. Campbell, and said all the items on it had been addressed. He also said there was a proposed shared driveway that would cross multiple lots, so easements would be needed. But he said it had not been prepared yet.

Mr. Andersen said a number of variances and special exceptions were being requested. He said it was a relatively large lot, but said he was trying to contain the development up close to the road at the highest and driest part of the lot, where no wetlands crossings were needed. He said he was applying for a pork chop subdivision, and said he hoped the variances would be relatively minor to get. He said the applications met the intent of the code, and noted that if this were a conservation subdivision, he wouldn't have to get any of the variances.

He asked Mr. Campbell if this was ready for acceptance.

Mr. Campbell said he wanted to hear from the Board on this.

Mr. Kelley asked if the applications were complete.

Mr. Campbell said the final two waiver requests had been received that day, and also said evidence was received that application had been made for State subdivision approval. He noted that although the letter from the State disapproved the system, he had talked with Adam Fogg, the septic designer, who said additional perc test data has just been submitted. He said Mr. Fogg thought there would be an approval by next week.

He told the Board that the previous evening, the ZBA had continued the variance applications to the following Tuesday, and would be holding a site walk prior to the meeting. He said the variances requested were for front setbacks because of the septic systems, and for side setbacks because of the septic systems and to enable the buildings to be closer than the setbacks allowed. He said a variance was also requested to allow another driveway, noting that pork chop subdivisions were supposed to be served by only one driveway.

He said the final issue was the special exception needed for the septic systems because the applicant couldn't meet the criteria in the septic regulations, but proposed an innovative system approved by NHDES. He said there were therefore a number of things up in the air, and also noted that the abutter would like the Board to hold off on accepting the application until these things were settled.

Mr. Andersen said he would like to keep to the schedule, because a closing was scheduled.

Richard Kelley MOVED to accept the Application for Subdivision submitted by Peter Andersen, Durham, New Hampshire, on behalf of Elizabeth C. Smith Trust, Durham, New Hampshire for the purpose of a porkchop subdivision, and schedule a Public Hearing for July 28, 2010. The property involved is shown on Tax Map 16, Lot 19-0, is located at 260 Durham Point Road and is in the Rural and Residence C Zoning District. Susan Fuller SECONDED the motion.

Mr. Kelley said in the past, the Board had accepted applications when the applicant also had matters before the ZBA. He said if the ZBA denied the variance and special exception requests to the point where the application in front of the Planning Board needed to be withdrawn or amended, that was what he would expect to see. He said he was willing to move forward with this.

The motion PASSED unanimously 7-0.

It was decided that a site walk would be held on July 28th at 5:00 pm. There was discussion that Board members who couldn't make that site walk could attend the ZBA site walk on July 20th at 5:00 pm. Mr. Andersen said the site would be marked out appropriately.

XIII. Acceptance Consideration of an Application for Conditional Use Permit submitted by Michael and Tammy Keegan, Durham, New Hampshire on behalf of Chester Tecce Jr., Durham, New Hampshire to expand the Tecce Farm business to include freshly made baked good, subs and prepared meals and to add a 24-foot mobile kitchen on the site. The property involved is shown on Tax Map 13, Lot 6-3, is located at 240 Mast Road, and is in the Office Research & Light Industry Zoning District.

Mr. Keegan spoke before the Board. He said they were looking to expand the business, and use their produce. He said the mobile kitchen seemed more feasible and economical than bringing the existing structure on the property up to code for food preparation. He said it would be a seasonal business.

Chair Parnell asked when they hoped to open, and Mr. Keegan said probably April of 2011.

Mr. Kelley asked if the application was complete, and Mr. Campbell said yes.

Richard Kelley MOVED to Accept an Application for Conditional Use Permit submitted by Michael and Tammy Keegan, Durham, New Hampshire on behalf of Chester Tecce Jr., Durham, New Hampshire to expand the Tecce Farm business to include freshly made baked good, subs and prepared meals and to add a 24-foot mobile kitchen on the site, and to schedule a Public Hearing for July 28th, 2010. The property involved is shown on Tax Map 13, Lot 6-3, is located at 240 Mast Road, and is in the Office Research & Light Industry Zoning District. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

It was agreed that no site walk was needed.

XIV. Other Business

A. Old Business:

Mr. Kelley said the previous Friday, he had met with the management committee for the Lamprey River, where the State had presented what they had done to date. He said the enabling legislation required them to rap things up in the fall, but he said he didn't think that was going to happen. He noted that three types of water user plans had to be created, for dam users, water users, and conservation users, and said this would take some time. He said he would keep the Board posted on this.

Request for Extension on the Conditions of Approval for the Boundary Line Adjustment at 27/35 Newmarket Road, Map 6, Lots 11-7 and 11-8.

Mr. Campbell said there was a request for an extension in meeting the Conditions of approval for Great Bay Kennels. He said Mr. Sawyer had come in for a boundary line adjustment because there was a structure on the property that violated the setback. He said the structure in question was permitted by the previous Code Officer as a temporary storage structure, for dog food as well as dogs when it rained.

He said the current Code Officer said approval was needed for the use of the building on the property. He said Mr. Sawyer had been trying to do get this approval, and provided details on this. He said there would be an application coming forward for the building, but said Mr. Sawyer needed some more time to make this building legal, before the boundary line adjustment could go through.

Ms. Fuller noted that she was friends with the applicant in addition to being a customer of Great Bay Kennels.

Bill McGowan MOVED to grant the extension on the Conditions of Approval for Boundary Line Adjustment at 27/35 Newmarket Road, Map 6, Lots 11-7 and 11-8, Durham, NH for 90 days. Richard Kelley SECONDED the motion, and it PASSED 6-0-1, with Susan Fuller abstaining.

B. New Business:

Mr. Campbell said an email had been received from Councilor Robin Mower, concerning the idea of codifying the requirement to invite the Conservation Commission to attend site walks for applications where its input would be needed. He said he wouldn't require this of an applicant, and said applicants were usually more than happy to show the site to people who would be voting on their application.

He noted that the Subdivision Regulations and the Rules of Procedure had been changed to make

sure that when there was a conservation subdivision, the Conservation Commission was brought into the process early. He said site walks with them were also required. He also said the Commission was often asked to give its perspective concerning conditional use permits, but said they often missed out on the opportunity to go on site walks.

There was discussion. Mr. Campbell said there was also the issue of the Conservation Commission receiving copies of applications. He said the regulations might need be changed so that applicants were required to provide copies to the Conservation Commission.

Mr. Campbell summarized that he would come up with something in response to Councilor Mower's email.

Mr. Campbell noted two drafts for Zoning changes that were now before the Planning Board. He said they had come out of the Town Council meeting on Monday, when the changes to the MUDOR/ORLI Districts to allow single family homes and duplexes were approved. He said the Council had requested that the Planning Board move quickly to add ORLI and MUDOR to Section 175-107, the Conservation Subdivision provisions of the Zoning Ordinance. He said the Council had also asked that the Board remove gas stations with convenience stores as a permitted use in the Table of Uses.

Mr. Roberts said the issue before the Council was that residential subdivisions would be allowed, based on the Zoning change that was approved for MUDOR and ORLI. He said he had told them that the Master Plan didn't allow this, and that MUDOR and ORLI were supposed to be commercial zones. He noted that Councilor Cote had asked what would happen in 5 years if someone said he wanted to put 15 lots on 25 acres, and also asked how they could be sure this wouldn't happen.

He said this begged the question of how this kind of thing could be handled. He said he remembered the Zoning rewrite discussions that there were not supposed to be major subdivisions for these zones. He said this posed a real problem. He spoke in detail about the idea of a transect, where land uses graded from commercial to rural. He noted that Rochester was dealing with this issue right now, and spoke about how Rochester planner Michael Behrendt worked with the transect approach.

Mr. Roberts noted that the ORLI zone allowed industrial uses, and said one of the hallmarks of a good ORLI layout was transportation routes that were short, and that didn't go through residential areas. He said the ideal transect layout, which B. Dennis came up with, graded from wide open spaces to more and more density.

He said the Capstone development would be in ORLI, and asked if the Planning Board at a later time might want to add to the Zoning Ordinance not permitting residential subdivisions, so it was very clear that the conditional use process for single family and duplexes was supposed to apply only to site plan review for commercial enterprises. He noted that some members of the Council had said the Planning Board should be trusted with the conditional use process.

He said the Planning Board hadn't wanted major subdivisions in these zones, whether

conservation subdivisions or not, because of possible conflicts with other uses in those zones. He said he had been asked where the Zoning Ordinance said that, and said that was where the problem was.

Councilor Smith asked Mr. Roberts if he saw any harm in going along with what the Council wanted.

Mr. Roberts said his concern was that it might allow impetus to someone to envision conservation subdivision for those areas. He said a solution would be to put a modification in the Ordinance saying major subdivisions weren't allowed in MUDOR or ORLI. He said there might be a transect between MUDOR and a residential area, but one couldn't get away with it between ORLI and MUDOR. He said this was extremely bad planning and violated what they were being taught by the Office of Energy Planning and B Dennis. He said they could go forward with the proposal now, and clean it up later. But he said it would have killed the Bryant project if someone had put a conservation subdivision around it.

Councilor Smith said the proposed change to the MUDOR and ORLI table of uses had been hanging by a thread at the Council meeting on Monday. He said the suggestion that there should be a safeguard built in, by adding the conservation subdivision requirement, was the way that two members of the Council, who might have voted against what was proposed, were able to vote for it. He said the vote was 6-2, and said if those two people hadn't voted in favor of it, the motion would have failed 4-4. He said what was before the Board now was the price for this.

Chair Parnell said it didn't sound like the Board was in a position to do anything with this that evening.

There was discussion, and Mr. Roberts provided further clarification of the issues involved.

Mr. Campbell said for 30 years at least before 2006, single family homes and duplexes were allowed in these zones, but only a few were built. He said theoretically it could be done now, but said it would be a really poor use of the land out there.

Mr. Kelley said he agreed with Mr. Roberts that there was a better way to alleviate the concerns of members of the Council.

Mr. Campbell said he had been given direction to do something, and said he would put it forward to the Board. He said if there was an alternative recommended to the Council, the Board needed to be sure why it was doing that rather than what the Council had requested them to do. But he said the conservation subdivision approach would be on the Board' agenda for July 28th.

C. Next meeting of the Board: **July 28, 2010**

XV. Approval of Minutes

May 26, 2010 - postponed

June 2, 2010 - postponed

XVI. Adjournment

Richard Kelley MOVED to adjourn the meeting. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Victoria Parmele, Minutes taker

Adjournment at 10:56 pm

Susan Fuller, Secretary